

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HUMBERTO LAGAR,

Petitioner,

OPINION AND ORDER

v.

13-cv-489-wmc

LIZZIE TEGELS, Warden,
Jackson Correctional Institution,

Respondent.

Petitioner Humberto Lagar has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging one or more adverse decisions by the Wisconsin Parole Commission. He has filed more than one amendment or supplement to his petition. He has also filed a motion for a preliminary injunction (dkt. # 15), which the court construes as a brief in support of his request for relief under § 2254. After conducting a preliminary review of his most recent supplemental petition (dkt. # 21) pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the court concludes that an answer is needed from the respondent.

FACTS

Lagar was convicted of possession with intent to deliver cocaine within a school zone in Milwaukee County Case No. 95CR2577. On February 16, 1996, the circuit court sentenced him as a repeat offender to serve twenty years in prison. He was given a mandatory release date of October 8, 2009, and a discharge date of November 29, 2015.

Lagar does not challenge the validity of his underlying conviction or sentence.

Instead, he challenges an adverse decision by the Parole Commission, which denied him “presumptive” mandatory release that was scheduled for October 8, 2009. Exhibits provided by Lagar reflect that the Parole Commission denied him release because: (1) he refused to participate in an Alcohol and Other Drug Abuse (“AODA”) treatment program as recommended by prison social workers; and (2) for protection of the public. For these same reasons, the Parole Commission denied him release in two subsequent decisions on August 10, 2010, and on August 14, 2012.

Lagar maintains that he does not need drug or alcohol treatment and that by repeatedly withholding his mandatory release he has been subjected to “involuntary commitment” or unlawfully detained. Construed generously, petitioner claims that the Parole Commission has denied him early release from prison in violation of his right to due process. Lagar appears to have raised these claims in multiple proceedings in an effort to exhaust state court remedies with respect to his claims. Because the claims appear to have been adjudicated in state court, the court will authorize service of the petition on the respondent.

ORDER

IT IS ORDERED THAT:

1. **Service of petition.** Pursuant to an informal service agreement between the Attorney General and the court, the Attorney General is being notified

to seek service on the respondent, Lizzie Tegels, in her official capacity as warden of the Jackson Correctional Institution.

2. **Answer deadline.** Within 60 days of the date of service of this order, respondent must file an answer to the petition, in compliance with Rule 5 of the Rules Governing Section 2254 Cases, showing cause, if any, why this writ should not issue.
3. **Motions to dismiss.** If the state contends that the petition is subject to dismissal on its face - - on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default - - then it is authorized to file within 30 days of this order, a motion to dismiss, a supporting brief and any documents relevant to the motion. Petitioner shall have 20 days following service of any dismissal motion within which to file and serve his responsive brief and any supporting documents. The state shall have 10 days following service of the response within which to file a reply.
4. **Denial of motion to dismiss.** If the court denies such a motion to dismiss in whole or in part, then it will set deadlines for the state to file its answer and for the parties to brief the merits.
5. **Briefing on the merits.** In the event that the respondent does not file a motion to dismiss as outlined above, the court will proceed to consider the merits. Petitioner has already filed more than one memorandum or

supplement in support of his grounds for relief. Therefore, the parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:

- a. Petitioner shall file any additional brief in support of his petition or give written notice that he intends to rest on his initial brief within 30 days after respondent files its answer.
- b. Once petitioner submits additional briefing or gives written notice that he does not intend to file further briefing, respondent shall file a brief in opposition within 30 days.
- c. Once respondent files a brief in opposition, petitioner shall have 20 days to file a reply if he wishes to do so.

Entered this 6th day of June, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge